KUEH BAK HONG & ORS.

v.

POH THIAN SONG & ORS.

HIGH COURT BORNEO
ABDUL KADIR SULAIMAN JC
[CIVIL SUIT NO. K347 OF 1979]
16 MAY 1991

PROFESSIONS: *Auditor - Audit documents prepared in strict compliance with court order - Whether can be discredited by report of another auditor - Preparation of audit report - Not all creditors were available for confirmation - Auditing work done as required by court order.*

PARTNERSHIP: *Dissolution of - Account between partners.*

Both plaintiffs and defendants were partners of one Meng Kiang Enterprise. Pursuant to an order dated 5 November 1979 (the "first order") the partnership was declared dissolved on 30 June 1979 and Messrs. Lau Hoi Chew & Co., chartered accountants to prepare an account of the partnership as at 30 June 1979.

By an order dated 13 February 1982 (the "second order") Messrs. Stephen Hng & Co., certified public accountants was appointed in place of Messrs. Lau Hoi Chew & Co.

Pursuant to the first order, the defendants handed over the original copies of the trading accounts and other relevant books and documents (hereinafter referred to as "the said accounts") to Messrs. Lau Hoi Chew & Co., for auditing.

Pursuant to second order, Messrs. Lau Hoi Chew & Co., was instructed to hand over the said accounts to Messrs. Stephen Hng & Co. for auditing. However the said accounts went missing before it could be handed over.

By another order dated 9 May 1988 (the "third order"), Messrs. Stephen Hng. & Co. was ordered to *inter alia* audit the trading accounts by using the photostat copies of trading accounts and balance sheet and profit and loss accounts obtained from Inland Revenue. The said order further provides that either parties be at liberty to apply for an order regarding distribution of the assets of the said firm in accordance with proportion of shares of each partners thereof.

On 21 December 1988, Messrs. Stephen Hng & Co., had completed the audited account and submitted them in Court. Pursuant to the third order, the defendants applied to Court for distribution of the net assets of the said firm based on the audit report. Plaintiffs opposed the application on the ground that the audit report does not give a true and fair view of the accounts between the parties. In an attempt to discredit the audit report, the plaintiffs submitted a report by Messrs. Hanafiah, Raslan & Mohamad, public accountants.

Held:

[1] Unless there is evidence, where there is none, to show that Messrs. Stephen Hng & Co., had deviated from the third order, the Court has to disregard the report by Hanafiah, Raslan & Mohamad.

[2] The third order is binding on both the plaintiffs and defendants. And the Court is satisfied that the audit documents were prepared in strict compliance with the third order and this application is made pursuant to the said order.

[Application allowed. Order accordingly.]

For the plaintiffs - Matthew T.K. Chan; M/s. Matthew T.K. Chan & Co.
For the defendants - Benedict H.K. Lim; M/s. Tiong, Wong, Lim & Co.

JUDGMENT

Abdul Kadir Sulaiman JC:

Plaintiffs and defendants were partners of Meng Kiang Enterprise carrying on a partnership business of timber logging contractor at No. 140, Foochow Road No. 2, Kuching. By a Court order dated 5 November 1979 (the "first order"), the partnership was declared dissolved on 30 June 1979 and Messrs. Lau Hoi Chew & Co., chartered accountants was to be appointed to take and make:

(i) an account of the partnership debts and liabilities on 30 June 1979;

(ii) an account of the credits property and effects belonging to the partnership on that date; and

(iii) an enquiry whether any of the partnership debts and liabilities has since been paid and by whom and out of what fund.

The auditors fees and disbursements were to be paid by all partners proportionately according to their respective shareholding in the partnership.

By another Court order dated 13 February 1982 (the second order), Messrs. Stephen Hng & Co., certified public accountants was to be appointed in place of Messrs. Lau Hoi Chew & Co.

Pursuant to the first order, the defendants handed over the original copies of the trading accounts and other relevant books and documents of the partnership (the said firm) relating to the period from 1 January 1976 to the first six months of 1979 and the originals of the trial balance for the period 1 January 1979 to 30 June 1979 and other relevant books and documents (hereinafter collectively referred to as "the said accounts") to Messrs. Lau Hoi Chew & Co. for them to audit.

Pursuant to the second order, Messrs. Lau Hoi Chew & Co., was instructed to hand over the said accounts to Messrs. Stephen Hng & Co., for the latter to audit the accounts of the said firm. However, the said accounts went missing before it could be handed over to Messrs. Stephen Hng & Co.

So by another Court order dated 9 May 1988 (the third order), Messrs. Stephen Hng & Co., was to take the following actions:

(i) to obtain the balance sheet and profit and loss accounts from the Inland Revenue department relating to the said firm for the period of 1 January 1978 to 31 December 1978 and to extend a copy to the plaintiffs;

(ii) to audit the trading accounts of the said firm for the period of 1 January 1979 to 30 June 1979 using the photostat copies of the trading accounts and the trial balance for the same period filed together with the application for the said order and combined with the 1978 Balance Sheet and Profit and Loss Account as reported to the Inland Revenue Department for the Year of Assessment 1979;

(iii) that the sum in excess of RM75,000 now deposited in this Honourable Court and placed in a fixed deposit account with Messrs. Hock Hua Bank Bhd., being the funds of the said firm be taken into account by Messrs. Stephen Hng & Co., when they carry out the said combined audit;

(iv) that the plaintiffs and defendants share assets, fixed and moveable, of the said firm in the proportion of their shares in the said firm after deducting all sums owing to the creditors of the said firm and advances made by partner (s) to the said firm;

(v) that upon Messrs. Stephen Hng & Co., completing the audits, the plaintiffs/defendants be at liberty to file a fresh summons in chambers for order (s) to be made regarding the distribution of the assets of the said firm in accordance with the proportion of shares of each partner of the said firm.

On 21 December 1988, Messrs. Stephen Hng & Co., completed the audit of the account of the said firm for the relevant period stated in the third order and submitted to the Court:

(a) a copy of auditors' report to the said firm;

(b) a copy of Audited Balance Sheet as at 30 June 1979;

(c) a copy of Audited Trading, Profit & Loss Account for the period ended 30 June 1979 together with a copy of notes on accounts;

(d) a copy of partnership assets distribution in proportion to partners' shareholdings after deducting all sums owing to the creditors of the firm and advances made by partners to the said firm; and

(e) a copy of balance sheet and profit & loss account for the financial year ended 31 December 1978 obtained direct from Inland Revenue Department, Kuching.

Pursuant to Clause (v) of the third order, the defendants by summons in chambers dated 10 April 1990 applied for an order based on the audit report that they be allowed and to be entitled to:

(i) enter final judgment against the plaintiffs for the sum of RM20,562.31 being the defendants' entitlement to the net asset of the said firm to be distributed in proportion to their shareholding pursuant to Clause (iv) and (v) of the third order;

(ii) a final order that the plaintiffs be similarly entitled to receive the sum of RM20,562.31 from the net asset of the said firm pursuant to Clause (iv) and (v) of the third order;

(iii) a final order that both the defendants and the plaintiffs be equally responsible in the proportion of their shareholding in the said firm, that is 50% each, to pay the creditors from the sum of about RM125,916.89 now accruing under the fixed deposit account with Messrs. Hock Hua Bank Berhad., Kuching in accordance with Clause (iv) of the third order;

(iv) an order that the defendants be authorised to withdraw the amount in the fixed deposit account to effect the payments for purposes of (i), (ii) and (iii) above;

(v) to a final order that the residue of the assets of the said firm after payment in (iv) above has been effected, be shared equally, that is 50% each, between the defendants and the plaintiffs; and

(vi) that each party pay their own legal costs.

The plaintiffs opposed the application by the defendants on the ground that the audit by Messrs. Stephen Hng & Co., does not give a true and fair view of the account between the parties. Indeed in the auditors' report, the auditor states:

> As such, we are unable to form an opinion as to whether the annexed Balance Sheet and Profit & Loss Account give a true and fair view of the state of affairs of the partnership at 30 June 1979 and of the results of the partnership for the period ended on that date.

The auditors' report also states:

> There are no partnership books of accounts, supporting invoices, payment vouchers and other necessary records available for the purposes of our audit. However, available alternative audit procedures like confirmation of bank fixed deposit (including interest) and confirmation of creditors (partially) are carried out accordingly.
>
> Our audit is carried out and compiled from the documents available as stated in the High Court order dated 9 May 1988.

In his evidence, Mr. Hng Khuim Chew of Messrs. Stephen Hng & Co., testified that the report was prepared by him. The auditors were appointed by the order of Court dated 9 May 1988 to audit the transactions taking place in 1979 with the aid of limited documents supplied by the Court. At the time of the audit the assets of the partnership were all sold. The only assets available was the fixed deposit with Hock Hua Bank Berhad. However, with such a handicap the firm was able to complete the work on 21 December 1988. As regards the creditors of the partnership firm, not all creditors were available for confirmation. Only those who were known to the auditors and whose addresses available were interviewed. First defendant who was the managing partner of the partnership firm was also interviewed. With the aid of the documents available and the various interviews he had, he was able to do the auditing work as required by the Court order.

In an attempt to discredit the audit report of Messrs. Stephen Hng & Co., the plaintiffs submitted a report by Messrs. Hanafiah Raslan & Mohamad, public accountants which they appointed. Unless there is evidence, which there is none, to show that Messrs. Stephen Hng & Co., deviated from the terms of the Court order of 9 May 1988, I have to disregard the report by Messrs. Hanafiah Raslan & Mohamad. The said order of the Court is binding on both the plaintiffs and the defendants. Having gone through the audit documents submitted by Messrs. Stephen Hng & Co. and the oral evidence of the auditor who prepared the documents and having considered the submissions by the learned Counsel for the plaintiffs and for the defendants, I am satisfied that the audit documents were prepared in strict compliance with the Court order of 9 May 1988 and this application before me now is made pursuant to the said order. In the circumstance, I allow the application by the defendants and make an order in the terms of the prayers of the defendants as contained in the summons in chambers dated 10 April 1990.

Also found at [1992] 3 CLJ 1434